

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

GARY LEE BJORSTROM,

Defendant and Appellant.

D049814

(Super. Ct. No. SCD199648)

APPEAL from a judgment of the Superior Court of San Diego County, Bernard E. Revak and David J. Danielsen, Judges. Affirmed.

After the court denied a motion to discover citizen complaints against a police officer (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531), Gary Lee Bjorstrom entered negotiated guilty pleas to possessing a controlled substance for sale (Health & Saf. Code, § 11351 subd. (a)) and resisting arrest. (Pen. Code, § 148, subd. (a).) He admitted a prior narcotics conviction (Health & Saf. Code, § 11370.2 subd. (a)). The court denied a motion to strike the prior narcotics conviction and sentenced him to prison for six years:

the three-year lower term for possessing a controlled substance for sale, enhanced three years for the prior narcotics conviction. It imposed a sentence of credit for time served on the resisting arrest conviction. The record does not include a certificate of probable cause. (Cal. Rules of Court, rule 8.304(b).)

FACTS

Viewing the record in the light most favorable to the judgment below (*People v. Johnson* (1980) 26 Cal.3d 557, 576), the following occurred. On June 12, 2006, sheriff deputies and a border patrol officer went to a home to arrest a male and a female fugitive. The home was identified as the last known address of the female. The male fugitive attempted to flee and a brief scuffle ensued between him and deputies. While the scuffle took place, the female fugitive and another male, later identified as Gary Bjorstrom, exited the home and walked away. When deputies approached them and asked them to stop, the two ran toward a car parked on the street. A deputy apprehended the female and the other deputy pulled a gun. Bjorstrom swung at the deputy and ran. The deputy chased after him, tackling him down to the ground. The deputy struggled with Bjorstrom until additional deputies arrived and Bjorstrom was subdued and apprehended. Bjorstrom removed a plastic container from his pocket and threw it to the ground. In the container was a small amount of methamphetamine. In Bjorstrom's pocket deputies found a second plastic container containing a substance consistent with heroin. In total, officers found 1.6 grams of methamphetamine and 5.4 grams of heroin. Because Bjorstrom entered guilty pleas, he cannot challenge the facts underlying the convictions. (Pen. Code,

§ 1237.5; *People v. Martin* (1973) 9 Cal.3d 687, 693.) We need not recite the facts in greater detail.

DISCUSSION

Appointed appellate counsel has filed a brief setting forth the evidence in the superior court. Counsel presents no argument for reversal but asks this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to as possible but not arguable issues: (1) whether the trial court improperly pressured Bjorstrom to change his plea; and (2) whether the trial court abused its discretion in denying Bjorstrom's motion to strike the prior drug conviction.

We granted Bjorstrom permission to file a brief on his own behalf. He has responded. Bjorstrom contends the trial court improperly pressured him to change his pleas from not guilty to guilty and abused its discretion in denying his motion to strike the prior drug conviction.

The guilty plea.

A guilty plea must be free and voluntary. (*Boykin v. Alabama* (1969) 395 U.S. 238, 242-243.) However, absent a certificate of probable cause, a defendant cannot challenge the validity of a guilty plea on appeal. (Pen. Code, § 1237.5; *People v. Mendez* (1999) 19 Cal.4th 1084, 1095.) The record before this court does not include a certificate of probable cause. As a result, Bjorstrom cannot challenge on appeal the validity of his guilty pleas.

Denial of the motion to strike the prior conviction.

At the sentencing hearing, the trial court refused to strike a prior conviction of possessing drugs for sale because of the circumstances of the present case, the facts and circumstances of the prior conviction, and Bjorstrom's conduct since the 1983 drug conviction. The court properly noted that it was aware it had discretion to strike the prior conviction. (See *People v. Meloney* (2003) 30 Cal.4th 1145, 1155.) The court abuses its discretion only when acting arbitrarily or in a capricious manner. (*People v. Jordan* (1986) 42 Cal.3d 308, 316.) Here, Bjorstrom entered a guilty plea to possessing methamphetamine and heroin for sale. He fought with the police officers after unsuccessfully attempting to flee. Since the 1983 conviction for possessing a controlled substance for sale, he has been convicted of possessing narcotics (Health & Saf. Code, § 11350, subd. (a)), driving under the influence of alcohol (Veh. Code, § 23152, subd. (a)), conspiracy to manufacture methamphetamine, escape (18 U.S.C., § 751, subd. (a)), using offensive words in public (Pen. Code, § 415, subd. (3)), and the present possessing heroin for sale and resisting arrest. Given this record, the trial court was not arbitrary or capricious in denying the motion to strike the prior drug conviction.

A review of the entire record pursuant to *People v. Wende, supra*, 25 Cal.3d 436, including the possible issues referred to pursuant to *Anders v. California, supra*, 386 U.S. 738, has disclosed no reasonably arguable appellate issue. Competent counsel has represented Bjorstrom on this appeal.

DISPOSITION

The judgment is affirmed.

BENKE, Acting P. J.

WE CONCUR:

McDONALD, J.

AARON, J.